Supreme Court, U.S.
FILED

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01-68 JUL 1 1 2001

No. ____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

ALLEN HERSCHAFT,

Petitioner,

v.

THE NY CITY CAMPAIGN FINANCE BOARD,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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85 pp

I) Questions Presented For Review

Whether the Court of Appeals and the Federal District Court erred by deciding that the Fourth Amendment right of Privacy does not apply in this case; and whether the derivative privacy rights of the Fourteenth Amendment due process rights which are found outside the Constitution (Extra Constitutional causes of action) *i.e.*, the charter of the rights of man which were also discussed in the case *City of Carmel by the Sea v. Young*, 85 Cal. Rptr. 1, 466 P.2d 225 (1970-California Supreme Court In Banc) could apply in this case, even though by implication they were held not to apply here by the U.S. Court of Appeals for the Second Circuit.

Whether error was committed by the Intermediate and Lower courts in this case by not allowing Plaintiff a sufficient flexibility of proof in order to show that there would be a reasonable probability of harassment of Plaintiff's contributors if there were to be a public disclosure by the defendant of plaintiff's contributors' names and addresses.

Whether the Intermediate and Lower Courts erred by holding that there were no violations by the defendant's record-keeping and disclosure requirements to the Equal Protection clause to the U.S. Constitution when it had omitted in its decision a basis for liability for violating the Equal Protection Clause (disproportionate impact) which was established in the case *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). This case held that disparate impact discrimination in employment discrimination cases at least, does not require proof of discrimination.

I) Questions Presented For Review – Continued

Whether the Intermediate and Lower court erred in holding that Plaintiff did not meet the *Nixon* case standards as set forth in *Nixon v. Shrink Missouri Government PAC*, 120 S.Ct. 897 (2000).

Whether the Intermediate and Lower courts erred in holding that the disclosure and record-keeping requirements of the defendant had a sufficiently weighty purpose when at a Status Conference hearing held on September 12, 2001, the counsel for defendant stated that "corruption is not a problem here in this case in that only small contributions were involved" whereas the problem of corruption "involved large contributions from contributors".

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THE DATE THE ORDER TO BE REVIEWED WAS ENTERED

On May 17, 2001 the decision of the Second Circuit Court of Appeals panel was entered in this case. On May 30, 2001 Plaintiff petitioned The Court of Appeals for the Second Circuit for a Rehearing which was subsequently denied on June 20, 2001.

BASIS FOR JURISDICTION BY THE U.S. SUPREME COURT

The case involves Federal and Constitutional questions, specifically the Fourth and Fourteenth Amendments to the U.S. Constitution. And alternatively, if the Fourth Amendment is held not to apply in this case then the application of extra-constitutional legal arguments derived from the concept of ordered liberty as described in the case, *City of Carmel by the Sea v. Young*, 85 Cal. Rptr. 1, 466 P.2d 225 (1970) or legal arguments taken from the Charter of the Rights of Men, with respect to the derivative Fourteenth Amendment due process rights, *City of Carmel by the Sea v. Young*, 85 Cal. Rptr. 1, 6, 466 P.2d 225, 230. Citing *Palko v. State of Connecticut*, 302 U.S. 319, 58 S.Ct. 149 (1937) and *Skinner v. State of Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113 (1942).

STATUTES, RULES, CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The Fourth Amendment to the U.S. Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the U.S. Constitution Section One

. . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rules of the City of NY – Rule 8-01. Procedures for Submitting Petitions.

(a) Any person may petition the Board to consider the adoption of a rule. The request must be sent to the Executive Director and contain the following information: (1) the rule to be considered, with the proposed language for adoption; (2) A statement of the board's authority to promulgate the rule; (3) arguments in support of the rule;(4) the period of time the rule should be in effect; (5) the name, address, telephone number and signature of the petitioner.

Rules of the City of NY – Rule 8-02. Responses to Petitions.

Within 60 days from the date the petition was received, the Board shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the Board's intention to grant the petition and to initiate rulemaking by a specified date. . . . The Board's decision to grant or deny a petition is final.

Rules of the City of NY – Rule 3-03(c)(4). Contributions totaling $99 or less from a single source.

(i) Contributions totaling $99 or less from a single source need not be separately itemized in a disclosure statement. Contributions that are not itemized are not matchable.

THE BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

Federal, Constitutional questions are involved in this case.

STATEMENT OF THE CASE

Plaintiff, pro-se, wrote to the defendant Board on May 9, 2000 pursuant to Section 8-01 of the Rules of the City of NY – Petitions for Rulemaking and submitted a petition for a possible rule amendment.

Plaintiff received a response from the Board dated June 21, 2000 stating that the Board had considered Plaintiff's petition to change the Board's rule 3-03(c)(4)(i) and

that it has decided not to adopt Plaintiff's proposed amendment. Under Section 8-02 of the Rules of the City of NY "the Board's decision to grant or deny a petition is final."

Plaintiff filed his complaint and affidavit in support on June 26, 2000 in the Federal District Court in the Eastern District of NY. On June 29, 2000 there was an order to show cause hearing held before Judge J. Weinstein. At that time, Plaintiff motioned the court to recuse itself. The court granted this motion. On August 3rd, 2000 the case was reassigned to Judge Carol B. Amon.

On September 11, 2000 before Judge Amon – there was a status conference held. At this hearing, the Deputy General Counsel Amy Loprest made an Admission Contrary to Interest, an inconsistent argument from what the defendant had argued subsequently, that in describing the three fold purpose of the campaign finance law, Ms. Loprest asserted, "And third, which is really not important here, is that it is to deter actual corruption or the appearance of corruption by soliciting and collecting large contributions [from] contributors."

At the Status Conference hearing of September 11, 2000, dates were ordered for the submission of various legal Memoranda from the parties. Most notably, on September 20, 2000 Plaintiff submitted to the court a Motion for a Preliminary Injunction, on the last paragraph of the second page of this document, Plaintiff alerted the court to the potential problem (in a generalized way) of harassment to his contributors or his potential contributors as a result of the disclosure requirements of the defendant.

At the hearing of November 14, 2000 to discuss Plaintiff's Motion for a Preliminary Injunction and the Defendant's Motion to Dismiss, Plaintiff raised directly the concern about the potential for his contributors to be harassed or attacked (namely by Arab or Palestinian nationals, or residents or U.S. citizens) as a result of the violence in the Middle East spilling over to the United States, more specifically New York City, where Orthodox Jewish residents of this city were attacked during the month of October, 2000, by the above named groups of thugs.

On December 8, 2000 the court issued a Memorandum and Order which denied Plaintiff's motion for a preliminary injunction and granted defendant's motion to dismiss, *Herschaft v. New York City Campaign Finance Board*, 127 F. Supp. 2d 164 (2000). The court held that the campaign finance laws did not violate the First Amendment's freedom of association, freedom of speech, or exercise of religion guarantees, nor did they violate his or his contributors' privacy rights and or the Fourth Amendment.

Specifically, in the decision, the court states (incorrectly so, as noted above) that "Plaintiff did not contend in his papers that harassment of his contributors was a concern in soliciting their addresses." *Herschaft v. The NY City Campaign Finance Board*, 127 F. Supp. 2d 164 at 169 (2000). The court also noted that plaintiff at oral argument raised the concern about a current conflict in the Middle East between Palestinians and Jews, and the fact that Orthodox Jewish residents in NY City had been attacked. As it turned out, the court took an unknown approach combined with an unknown methodology as to

how it formulated its conclusion into the issue of harassment and attacks by third parties and its reasonable probability of occurring as it stated: " These generalized assertions fall woefully short of demonstrating that . . . Plaintiff's supporters face harassment if their addresses are revealed." *Id.*

On or about December 13, 2000 the date the Judgment was entered, Plaintiff motioned the court to reconsider its decision by altering or amending its Judgment through a FRCP 59e, 60, 61 Motion. In his moving papers, Plaintiff presented for consideration two affidavits amongst Plaintiff's supporters and possible contributors, numerous newspaper articles detailing the spillover of violence from the Middle East to Jewish neighborhoods in the U.S. particularly in NY City where there were attacks against Orthodox Jews by Palestinian and or Arab American thugs in the city's streets especially in Brooklyn.

In his papers, Plaintiff also presented a new case (*Nixon v. Shrink Missouri Government PAC*, 120 S.Ct. 897 (2000)) which had arguments in the decision which seemed to support Plaintiff's position although it admittedly was not controlling in our case, in that the decision there went against Plaintiff candidate.

Plaintiff, also introduced an argument regarding a possible Fourteenth Amendment – Equal Protection violation by the Defendant's disclosure statutes and regulations. The court suggested that these new arguments and submissions were improper for it to consider on this motion but considered them nonetheless in the decision. Plaintiff avers here that they were appropriate to submit

on such motion because the decision is not to become a vehicle of injustice to be used against Plaintiff and furthermore Plaintiff regarded the new information as justifying an alteration and or amendment of the decision based upon the exceptional circumstances that Plaintiff felt he was providing to the court.

On January 18, 2001 the court issued a Memorandum and Order denying Plaintiff's 59e, 60 Motion to Alter or Amend the Judgment of December 8, 2000. *Herschaft v. NY City Campaign Finance Board*, 139 F. Supp. 2d 282 (2001). On January 24, 2001 a Notice of Appeal was filed.

On appeal, Plaintiff filed a brief, reply brief and 3 supplemental authorities papers under FRCP Rule 28j.

In the 3 supplemental Authorities Papers – FRCP Rule 28j, Plaintiff clarified and distilled his thinking/approach as to: 1. the first supplemental paper was on due process issues raised in the case of *NAACP v. Alabama*, 357 U.S. 449, 78 S.Ct. 1163 (1958) and its progeny in the Supreme Court of the U.S. that Plaintiff felt that the rights to privacy that were extended to the Plaintiff in that case should be extended to Plaintiff and his contributors in this case; 2. The second paper dealt with the methodology Plaintiff believed should have been applied by the lower court with respect to the finding of a basis on which to hold for Plaintiff where Plaintiff claimed that an objective and subjective approach be employed with respect to the issue as to whether the fear on the part of Plaintiff's contributors was reasonable in their circumstances as they viewed it (from a history of thousands of years of persecution at the hands of Arabs, Russians,

Non-Jews, Catholics, etc . . . and from a subjective standpoint whether a reasonable prudent person would have acted this same way given the same or similar circumstances that Plaintiff's contributors found themselves in); and 3. The third supplemental authority paper submitted one day before Oral Argument in the Second Circuit Court of Appeals dealt with the issue of the Fourth Amendment applying in this case, the derivative extra constitutional rights for the Fourth and Fourteenth Amendments due process rights of privacy and the general right to privacy afforded much protection in the laws of the states and the Federal government.

On May 18, a three Judge Panel of Court of Appeals for the Second Circuit affirmed the lower court decision.

On May 30, 2001, Plaintiff petitioned the court for a rehearing based upon three issues that Plaintiff felt was decided incorrectly.

On June 19, 2001, Plaintiff filed a Motion to Supplement and Amend his petition of May 30, 2001, in order to notify the court of a case and arguments that Plaintiff had located which he believed bolstered his argument with respect to the issue as to whether the defendant had violated the Equal Protection Clause in this case.

On June 20, 2001, Plaintiff was notified that his Petition for Rehearing was denied by the Second Circuit Court of Appeals.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. A United States Court of Appeals has decided an important federal question in a way that conflicts with a decision by a state court of last resort.

2. A United States Court of Appeals has decided an important question of federal law that has not been, but should be settled by this court, and

3. A United States Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

1. A Conflict Between A U.S. Court Of Appeals And A State Court Of Last Resort.

Plaintiff asserts that if this court should hold like the lower one did that the Fourth Amendment is not applicable here, then he argues, as in the *Nixon* 1977 case, Plaintiff has or should be afforded legal based rights or privileges in addition to the constitutional ones connected to his privacy right which were not considered by the lower court in the rendering of its decision. *Nixon v. Administrator of General Services*, 97 S.Ct. 2777 (1977) at 2790, 2798.

In the *City of Carmel by the Sea v. Young*, 85 Cal. Rptr. 1, 466 P.2d 225 (1970), the California Supreme Court en banc, held that the concept of personal liberties and fundamental human rights entitled to protection against overbroad intrusion or regulation by government is not limited to those expressly mentioned in either the Bill of Rights or elsewhere in the Constitution, but instead extends to basic values implicit in the concept of ordered liberty, and to the "basic

civil rights of man" 85 Cal. Rptr. 1, 6, 466 P.2d 225, 230. Citing *Palko v. State of Connecticut*, 302 U.S. 319, 58 S.Ct. 149 (1937) and *Skinner v. State of Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113 (1942). As a result, Plaintiff contends that he has a cause of action under this derivative area of law if it is held that the Fourth Amendment is not applicable in his case.

Included in the list of basic liberties and rights not explicitly listed in the Constitution in the *Young* case are: 1. "freedom to associate and privacy in one's associations" including privacy of the membership lists of a constitutionally valid organization at 6, citing *NAACP v. Alabama*, 78 S.Ct. 1163 (1958); *Bates v. City of Little Rock*, 80 S.Ct. 412 (1960); *Gibson v. Florida Legislative Committee*, 83 S.Ct. 889 (1963); and 2. the right to privacy and to be let alone by the government in the private realm of family life, at *Id.*; Citing *Prince v. Com. of Massachusetts*, 64 S.Ct. 438 (1944).

The court in *Herschaft*, 127 F. Supp. 2d 164 at 171, stated "the Supreme Court recognized in *Roe v. Wade*, 410 U.S. 113, 152, 93 S.Ct. 705 (1973), that a general 'right to personal privacy' exists under the Constitution based on personal rights that are 'fundamental in the concept of ordered liberty,' such as activities relating to marriage, contraception etc. . . . This right has been construed to include 'the individual interest in avoiding disclosure of personal matters' and 'the interest in independence in making certain kinds of important decisions.' " Citing *Whalen v. Roe*, 429 U.S. 589, 598-99, 97 S.Ct. 869 (1977). Plaintiff contends here that he also has a derivative right under the Due Process Clause of the Fourteenth Amendment to have a privacy right in his association's disclosure lists of a constitutionally valid

organization, *City of Carmel by the Sea v. Young*, 85 Cal. Rptr. 1, at 6, 466 P.2d 225, 230.

Plaintiff asserts that such privacy rights to membership lists of a constitutionally valid organization should also extend to contributor lists of candidates of third parties who are having trouble raising sufficient funds to run a respectable campaign when the type of chill exists as in our case and like that in *NAACP v. Alabama, supra.* Here there is a two thousand or more years of history of fear of safety through attacks and persecution that is at stake here and that Plaintiff has found that even of small amounts to be donated if their names and addresses were to become public then potential contributors do not wish to contribute for fear of attack or harassment by third parties as a result of such disclosure.

2. An Important Issue of Federal Law For The First Time Has Been Decided, But It Should Be Settled by the U.S. Supreme Court.

With respect to the issue of Harassment of Plaintiff's contributors, and Plaintiff himself, who is an Independent candidate running in a third party, the *Buckley* court has provided some guidance:

> "Minor parties must be allowed a sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a *reasonable probability* that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties. . . . New parties that have no history upon which to draw may

> be able to offer evidence of reprisals and threats directed against individuals or organizations holding similar views. Where it exists the type of chill and harassment identified in *NAACP v. Alabama* can be shown. We cannot assume that courts will be insensitive to similar showings when made in future cases."

Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 at 661 (1976).

Plaintiff contends here that the trial court and the Second Circuit Court of Appeals panel who heard the case were insensitive to Plaintiff's and his contributors' fears of harassment, attack, beatings at the hands of Arab and or Palestinian third parties in New York City back in October, 2000 and to the terrible, unfortunate history that the Orthodox Jewry has had to undergo in the past two thousand years or so. This is our history; it is one of torture, and persecution and beatings at the hands of non-Jews throughout time. We are therefore asking because of this legitimate fear of attacks, and persecution that we be exempted from the disclosure requirements period on this ground of persecution or fear of it by third parties like that which happened on October, 2000.

The attacks against Orthodox Jews – October 2000, during the pendency of this case, as well as back in the early 1990's at Crown Heights under Mayor David Dinkins in NY City, combined with a some 2000 year history of persecution, pogroms, and torture at the hands of Blacks, Arabs, Palestinians, Germans, Russians, Roman Catholics, Christians, Communists, Socialists etc. . . . makes the environment for the Orthodox look very dangerous and therefore makes the issue of privacy loom very large indeed.

As discussed in the third supplemental paper for the Second Circuit Court of Appeals case under F.R.C.P. Rule 28j as well as at Oral Argument, the methodology plaintiff would employ in this case to prove a reasonable probability of Harassment by third parties or the threat of harassment would be to utilize the concept of extreme emotional disturbance and justification as those concepts are used as mitigating factors to the defense of intentional murder in Criminal Law.

Plaintiff notes here that the term "reasonable probability" has not been defined or discussed in any previous Supreme Court cases and since the *Buckley* case states that there should be a sufficient flexibility of proof Plaintiff provides his methodology and approach here, which is unlike the decision of the lower court which employs an unknown methodology and approach and comes up with the conclusion that the fear of harassment or attacks of Plaintiff's contributors is highly speculative.

Basically, what is involved here is transference of the idea or concept of Subjective and Objective elementation as used in the above two concepts to the case at hand. The question then will become: 1. Is what Orthodox Jews are doing now *i.e.*, their strong interests that they have in retaining their privacy reasonable from their standpoint? One of thousands of years of torture at the hands of the non-Jews and 2. Is what the Orthodox Jews are doing reasonable from the standpoint of a reasonably prudent third Party or not? Plaintiff argues that the answer is affirmative on both grounds and that therefore error has been made in the case.

3. A U.S. Court of Appeals Has Decided A Case Which Conflicts With Relevant Decisions of the U.S. Supreme Court.

I.

In *Nixon v. Shrink Missouri Government PAC*, 120 S.Ct. 897 (2000), the Supreme Court of the U.S. asked whether there was "any showing that the (contribution) limits (in my case also the disclosure requirements of the Campaign Finance law) were so low as to impede the ability of candidates to amass the resources necessary for effective advocacy" citing *Buckley*, 96 S.Ct. at 612. "We asked, whether the contribution limitation (in my case the disclosure and the threshold requirements) was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless. . . . The issue must go to the power to mount a campaign with all the dollars likely to be forthcoming." *Nixon*, 120 S.Ct. at 909.

Plaintiff contends that the defendant's disclosure requirements and threshold requirements, all and each, individually, conspire to cause the Plaintiff to lack the necessary resources for effective advocacy in his campaign for office. Since as stated above there are very serious privacy concerns that the Orthodox Jewish community has regarding the public disclosure of their names and addresses of potential supporters to Plaintiff's campaign for political office given the recent physical attacks that have taken place in New York City and in other cities throughout the world regarding third parties and their very threat that they pose in terms of their hostility physically and mentally to Orthodox Jewry.

II.

Claims were also made at the trial and appellate court level that said disclosure laws of defendant and also its threshold requirements that it has set, violate the Equal Protection Clause of the U.S. Constitution. Plaintiff relied on Supreme Court precedent in two cases regarding a possible Equal Protection violation *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064 (1886) and *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

Plaintiff argues that the Equal Protection violation by the defendant is based upon the difficulty Plaintiff is facing and has been facing regarding the giving of addresses by Plaintiff's supporters or potential supporters when there have been attacks against the group that Plaintiff and his supporters belong to (Orthodox Judaism) in his borough in which he lives, during the pendency of this action in October, 2000 as detailed in Plaintiff's submission of articles and affidavits attesting to that fact in his F.R.C.P. Rules 59e, 60, 61 motion and earlier moving papers. This problem is not faced by plaintiff's rivals or competitors for office who are non-orthodox Jews or who are not Jewish – they do not face the privacy problem like Plaintiff does in this case.

A law can be neutral on its face or in purpose, but still be applied in a discriminatory manner. In *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064 (1886), the Supreme Court struck down a San Francisco ordinance banning the operation of hand laundries in wooden buildings, because local officials were closing down only laundries owned by persons of Asian descent. White owners of

such institutions were permitted to keep their businesses open.

In the *Yick Wo* case, it was held that the ordinances were unconstitutional and invalid; that it was a breach of the Fourteenth Amendment to the Constitution to empower any man, or body of men, at his or their absolute and unrestrained discretion, to give or withhold permission to carry on a lawful business in any place. *Yick Wo v. Hopkins,* 6 S.Ct. 1064 at 1065.

In the case at bar, Plaintiff contends that his case is like the *Hopkins* case, in that a law that is neutral on its face or in purpose can be applied in a discriminatory manner. Plaintiff avers however that unlike the *Hopkins* case, where it was held that there was an unbridled discretion in the hands of the Board of Supervisors to give or withhold permission to carry on a lawful business, in Plaintiff's case he argues that there is no mechanism in place to allow for exceptions to the disclosure requirements and or threshold requirements based on privacy concerns like that found in *Hunter v. City of NY,* 396 NY Supp. 2d 186. And contends therefore that Orthodox Jewish contributors are not being treated in a manner similar to individuals or who are not Orthodox Jewish with respect to their privacy concerns being considered and or with respect to their free exercise of their religious beliefs being interfered with by the authorities.

With respect to this issue of an Equal Protection violation, Plaintiff argues that the law is discriminatory in application although neutral on its face. The defendant's disclosure laws would have the tendency to put out of

business Orthodox Jewish candidates who are not independently wealthy and who would depend upon the community for support financing for their efforts. They would be put out of business unlike similarly situated non-Jewish candidates and Jewish but non-Orthodox Jewish candidates in that Plaintiff's likely supporters and contributors would want to remain Private their names and addresses, and this would not be a problem for the other two groups based on the above some two thousand year history of persecution at the hands of the non-Jews for the Orthodox Jewish candidate and what he could expect to face.

This case is similar to *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064 (1886), in that as applied the laws are putting out of business, groups (Japanese laundrymen or in my case Orthodox Jewish candidates who are not independently wealthy and who rely on the community for support) – in my case, the parties are not similarly situated (*i.e., Non-Jewish and Non-Orthodox Candidates v. Orthodox Jewish* candidates) and therefore hence a need for an accommodation. In Plaintiff's case there is thus a problem of disproportionate impact.

In the lower court decision *Herschaft v. The NY City Campaign Finance Board*, 139 F. Supp. 2d 282 at 286, the decision makes no reference, in fact leaves out a means by which a party can succeed on its Equal Protection claim (*i.e.*, through disproportionate impact) even though it cites *Hayden v. County of Nassau*, 180 F.3d 42 (2nd Cir., 1999) which contains such a concept or approach. *See* Synopsis *Hayden, supra* at 43.

> "[P]laintiff poses for the first time in his reply brief a new argument, asserting that the challenged disclosure provision violates the 14th Amendments guarantee of equal protection because it unfairly burdens Orthodox Jews. . . . The court notes, however, that even were it to consider the argument it is plainly frivolous. The disclosure laws at issue do not expressly distinguish between candidates on the basis of religion, and there is no allegation that the laws were motivated by discriminatory animus against Orthodox Jews. Accordingly, the provisions do not violate the equal protection clause. *See Hayden v. County of Nassau*, 180 F.3d 42, 48 (2nd Cir., 1999)."

Herschaft v. NY City Campaign Finance Board, 139 F. Supp. 2d 282, 286 (Jan. 18, 2001).

In *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), the Court examined employment practices that appeared neutral on their face but disproportionately impacted African-Americans negatively. *Id.* at 425-26. Duke Power required all employees to have a high school diploma and pass a standardized general test as a condition for employment or transfer. The court found that even though there was no discriminatory intent, the power company was in violation of Title VII of the 1964 Civil Rights Act. "The Act proscribes not only overt discrimination but also practices that are fair in form, by discriminatory in operation." *Id.* at 431.

In the case at hand, defendant's disclosure laws are discriminatory in operation. Plaintiff strongly believes because they cannot accommodate the kinds of Privacy concerns that Plaintiff and his followers have regarding

the public disclosure of contributor's names and addresses.

III.

Plaintiff questions here how the lower court can state in its December 8, 2000 decision that the defendant board had a sufficiently weighty purpose to meet the strict scrutiny standard or compelling basis standard (*Herschaft v. NY City Campaign Finance Board*, 127 F. Supp. 2d 164 at 168) when the defendant admitted in the September oral argument testimony that corruption is really not a problem here because only small amounts of money are involved and that it (corruption) only involves large contributions from contributors, and thereby made an admission contrary to interest which is presumed to be true under the NY law, but can be overcome with cogent and convincing proof to the contrary, *Arena v. Home Indemnity Company*, 306 NY Supp. 2d 242 (2nd Dept., 1969). (*See* appendix) Now this was never asked of the defendant to do so either at the lower or intermediate court levels and is one of the reasons why Plaintiff believes there was error in his case.

Also Plaintiff has argued many times in his moving papers below that with respect to knowing the sources of Plaintiff's contributors this is really not a factor in this case because 95-98% of Plaintiff's contributors are expected to be Orthodox Jewish assuming Plaintiff qualifies under the Campaign matching fund program to receive campaign funds. Now, this leaves only the detection of violations and record-keeping as reasons for/

justifications for/ the purpose of the defendant's disclosure requirements. And this it should be held as a matter of law is not sufficient to overcome the burden that the defendant must meet under the law in this case which is strict scrutiny or compelling in order to interfere with Plaintiff's associational and other interests at stake in the case here. According to *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612 at 638 the primary purpose of the Act is to deter corruption and that the other two factors are only ancillary (*i.e.*, record-keeping, and knowing the sources of Plaintiff's contributors).

Respectfully submitted,

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APPENDIX

NOTE: THIS OPINION WILL NOT BE PUBLISHED IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.

United States Court of Appeals, Second Circuit.

Allen Stuart HERSCHAFT, Plaintiff-Appellant,

v.

N.Y. CITY CAMPAIGN FINANCE BOARD, Defendant-Appellee.

No. 01-7136.

May 17, 2001.

Appeal from an order of the United States District Court for the Eastern District of New York, Carol B. Amon, Judge.

Allen Herschaft, Brooklyn, NY, pro se.

Jonathan Wayne, Special Assistant Corporation Counsel, New York, NY; Sue Ellen Dodell, of counsel, for appellee.

Present OAKES, WINTER and STRAUB, Circuit JJ.

SUMMARY ORDER

AFTER ARGUMENT AND UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court is AFFIRMED.

Appellant Allen Herschaft, appearing *pro se*, appeals from the dismissal of his complaint against Defendant

New York City Campaign Finance Board ("CFB"), challenging New York City's disclosure rules for candidates seeking public matching funds in city elections. Herschaft argues that the application of CFB Rule 3-03(c)(4)(i) and New York Administrative Code § 3-703(6) to his campaign for city council violated First and Fourth Amendment rights of freedom of association, freedom of speech, free exercise of religion, and privacy.

The CFB moved to dismiss Herschaft's complaint pursuant to Fed.R.Civ.P. 12(b)(6) and the District Court granted the motion by Memorandum and Order dated December 8, 2000. Among other things, the District Court held that New York's disclosure requirements "passed constitutional muster" because they are "substantially related" to the "significant" government interests of insuring that public funding is given to candidates with a modicum of public support and of providing the electorate with information about candidates for public office. The District Court also rejected Herschaft's claim that he needed an exception to the requirement for himself or his supporters. By Memorandum and Order dated January 18, 2001, the District Court later rejected Herschaft's motion for reconsideration pursuant to Fed.R.Civ.P. 59(e) and for relief from judgment pursuant to Fed.R.Civ.P. 60.

We review *de novo* the dismissal of a complaint pursuant to Fed.R.Civ.P. 12(b)(6). *Prestia v. O'Connor,* 178 F.3d 86, 88 (2d Cir.1999). A complaint may be dismissed pursuant to Rule 12(b)(6) if the plaintiff can prove no set of facts in support of his claim which entitles him to relief. *EEOC v. Staten Island Sav. Bank,* 207 F.3d 144, 148 (2d

Cir.2000). On a motion to dismiss, the facts in the complaint are presumed to be true and all reasonable inferences should be drawn in the plaintiff's favor. *Id.* We review the denial of a motion for reconsideration pursuant to Rule 59 and for relief from judgment pursuant to Rule 60 for an abuse of discretion. *Hydro Investors, Inc. v. Trafalgar Power, Inc.*, 227 F.3d 8, 15 (2d Cir.2000) (Rule 59); *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 162 F.3d 724, 729 (2d Cir.1998) (Rule 60).

For substantially the reasons set forth by the District Court, the judgment of the District Court is hereby AFFIRMED.

Allen HERSCHAFT, Plaintiff,

v.

THE NEW YORK CITY CAMPAIGN FINANCE BOARD, Defendant.

No. 00 CV 3754 CBA.

United States District Court,
E.D. New York.

Dec. 8, 2000.

Allen S. Herschaft, New York City, Pro se.

Sue Ellen Dodell, Gen. Counsel, Amy M. Loprest, Deputy Gen. counsel., Jonathan Wayne, Assoc. Counsel, New York City, for defendant.

MEMORANDUM AND ORDER

AMON, District Judge.

Plaintiff challenges the constitutionality of Section 3-03(c)(4)(i) of Title 52 of the Rules of the City of New York and Section 3-703(6) of New York City's Administrative Code and Charter, and requests a preliminary injunction barring the defendant New York City Campaign Finance Board (the "Campaign Finance Board") from enforcing the two provisions against him. The defendant cross-moves to dismiss plaintiff's Amended Complaint[1] pursuant to Fed.R.Civ.P. 12(b)(6). For the reasons stated herein, plaintiff's motion for a preliminary injunction is denied and defendant's motion to dismiss is granted.

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[1] Plaintiff filed his Complaint on June 26, 2000 and his Amended Complaint on September 20, 2000.

Background

Plaintiff is seeking to run as an independent candidate for the New York City Council ("City Council") from the 48th District in Brooklyn in the 2001 election. He intends to collect campaign contributions in small amounts, typically less than $10, from worshippers in various synagogues within his district and would like to receive public matching funds from defendant Campaign Finance Board.

The Campaign Finance Board is a five-member body consisting of two individuals from different political parties appointed by the Mayor, two individuals from different political parties appointed by the Speaker of the City Council, and a chairman appointed by the Mayor in consultation with the Speaker. The Board is responsible for administering the New York City Campaign Finance Program, which was established in 1988 by the New York City Campaign Finance Act, N.Y.C. Admin. Code §§ 3-701, *et seq.*

Under the City's campaign finance program, candidates for Mayor, Public Advocate, Comptroller, Borough President, or City Council who meet certain requirements are eligible to receive public funding for their campaigns. In the 2001 election, eligible candidates can receive in public funds four times the amount they raise on their own from each contributor, up to a maximum of $1,000 in public funds per contributor. For example, if a candidate were to raise $100 from a single contributor, the City would give the candidate an additional $400.

To be eligible for these public matching funds, a candidate for City Council must, among other things,

meet a threshold of at least $5,000 in contributions from New York City residents, including at least 50 contributions of $10 or more from residents of the candidate's district. N.Y.C. Admin. Code § 3-703(2)(iv). Candidates desiring public funding are also subject to strict contribution and expenditure limitations,[2] and extensive record-keeping and disclosure requirements. It is these record-keeping and disclosure requirements that are at issue in this case.

Specifically, candidates must report in periodic disclosure statements to the Campaign Finance Board "the full name, residential address, occupation, employer, and business address" of each contributor, and the amount of each contribution and the date it was received. N.Y.C. Admin. Code § 3-703(6); N.Y.C. Rules, Tit. 52, § 3-03(3)(c)(1). A contributor's occupation, employer, and business address, however, need not be disclosed for any contributor whose aggregate contributions are $99 or less. N.Y.C. Admin. Code § 3-703(6); N.Y.C. Rules § 3-03(6). Candidates are also required to maintain records of all of their contributions, including photocopies of checks or other monetary instruments and, for cash contributions, a written log containing, for each contribution, the contributor's name, residential address, contribution amount, date, and signature. N.Y.C. Rules, Tit. 52, § 4-01(a)-(b). A candidate need not separately itemize individual contributions from a single donor in his disclosure statements if those contributions total less than $99, but such un-

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[2] In the 2001 election, candidates for City Council may only receive a maximum of $2,500 from each contributor and may only spend $137,000 overall in the general election.

itemized contributions are not eligible for public matching funds. N.Y.C. Rules, Tit. 52, § 3-03(c)(4)(i).

On May 9, 2000, plaintiff petitioned the Campaign Finance Board pursuant to Section 8-01 of Title 52 of the Rules, asking that it amend Section 3-03(c)(4)(i) to permit relaxed reporting rules for campaign contributions of less than $10. (Am. Comp. ¶ 3; Gordon Aff. Ex. C.) In particular, plaintiff suggested that the Campaign Finance Board match with public funds contributions of less than $10 "provided that the contributor provides his full name and signature in an affirmation that he is a resident of the City on [sic] N.Y. (one of the 5 boroughs)." (Gordon Aff. Ex. C.) On June 21, 2000, the Campaign Finance Board declined to adopt plaintiff's proposed amendment. (Am. Compl. ¶ 4; Gordon Aff. Ex. D.)

Discussion

I. Defendant's Motion to Dismiss

Defendant moves to dismiss the Amended Complaint for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6). A district court should only grant a motion to dismiss if "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *accord Tarshis v. Riese Org.,* 211 F.3d 30, 35 (2d Cir.2000). The Court must accept all factual allegations in the complaint as true and draw inferences from those allegations in the light most favorable to plaintiff. *Tarshis,* 211 F.3d at 35.

In this case, the alleged constitutional violations in the Amended Complaint, whether grounded in the First or Fourth Amendments fail as a matter of law.

A. First Amendment Challenge

1. Freedom of Association

Plaintiff's strongest challenge to Section 3-03(c)(4)(i) of Title 52 of the Rules of the City of New York and Section 3-703(6) of New York City's Administrative Code and Charter, based on the First Amendment privilege of association, is unavailing. Even accepting all of plaintiff's allegations as true and drawing all inferences from those allegations in plaintiff's favor, the instant campaign finance provisions survive the exacting scrutiny standard established by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam), for the consideration of campaign disclosure rules.

In *Buckley*, the Supreme Court noted that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment" and held that disclosure provisions must be reviewed with "exacting scrutiny." *Buckley*, 424 U.S. at 64, 96 S.Ct. 612. Thus, the government's interests must be "sufficiently important to outweigh the possibility of infringement" and there must be a "relevant correlation" or "substantial relation" between the governmental interests and the information required to be disclosed. *Id.* at 64, 66, 96 S.Ct. 612; *see also In re Grand Jury Proceedings*, 776 F.2d 1099, 1102-03 (2d Cir.1985); *Local 1814, Int'l Longshoremen's Assoc., AFL-CIO, v. Waterfront Comm'n of New York Harbor*, 667 F.2d 267, 271 (2d Cir.1981).

The Court in *Buckley* considered the similar record-keeping and disclosure provisions of the Federal Election Campaign Act of 1971 ("FECA"), which at the time required campaign committees to keep records including the name and address of every individual making a contribution in excess of $10, along with the date and the amount of the contribution, and additionally to keep records of the donor's occupation and principal place of business if the donor's contributions in aggregate totaled more than $100. *Buckley*, 424 U.S. at 63, 96 S.Ct. 612. The FECA also required campaigns to submit reports containing the full name, mailing address, occupation, and principal place of business of each person who had contributed more than $100 in a calendar year, as well as the amount and date of the contributions. *Id.*

In upholding these provisions, the Court found that the disclosure requirements served, in the least restrictive way, the substantial governmental interests in: (1) providing the electorate with campaign finance information, (2) deterring actual corruption and avoiding the appearance of corruption, and (3) gathering data to detect violations of contribution limitations. *Buckley*, 424 U.S. at 66-68, 96 S.Ct. 612. Although the Court left the door open to specific challenges by parties and candidates who could show "that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisal from either Government officials or private parties," it declined to exempt minor parties and independent candidates as a whole from FECA's requirements. *Id.* at 74, 96 S.Ct. 612.

Applying *Buckley* to the instant case, New York City's campaign finance disclosure requirements pass constitutional muster. The instant provisions are substantially related to significant governmental interests. Most importantly, the challenged disclosure provisions are necessary to ensure compliance with the City's campaign finance laws, in particular its rules regarding public funding, and allow the Campaign Finance Board to determine whether a candidate is eligible for matching funds and in precisely what amount.

Under the City's public financing program, eligible candidates in the 2001 City Council election will be able to receive for each contribution made to them by a New York City resident, regardless of the amount, four times that amount in public matching funds up to a maximum of $1,000 per contributor. The City plainly has a substantial interest in ensuring that public money, which is distributed in a four-to-one ratio, is given only to those candidates that have the requisite support within their district and that have received legitimate matchable contributions from New York City residents. The requirement of recording and disclosing a contributor's address is central to the City's determination of whether the contribution is one deserving of matching funds. A simple affirmation of the contributor would not lend itself to any readily available means of confirmation. This interest in ascertaining the propriety of giving public funds to a candidate is not lessened when the candidate accepts small contributions. Under the current system, the City matches contributions of any amount.

In addition, the City's disclosure provisions also serve the interest recognized in *Buckley* of providing the

electorate with information about the candidates for public office and their constituencies, in particular "where political campaign money comes from and how it is spent by the candidate." 424 U.S. at 66-67, 96 S.Ct. 612 (citing H.R.Rep. No. 92-564, at 4 (1971)); *see also Vote Choice, Inc. v. Di Stefano,* 4 F.3d 26, 32 (1st Cir.1993) (considering a similar so-called "first dollar" disclosure provision and concluding that "there is a substantial link between data revealed by first dollar disclosure and the state's compelling interest in keeping the electorate informed about which constituencies may command a candidate's loyalty").[3]

The challenged first dollar disclosure provisions here are therefore also not impermissibly overbroad. In *Buckley,* the Supreme Court upheld the FECA's $100 threshold for reportable contributions, stating that "[t]he line is necessarily a judgment decision, best left in the context of this complex legislation to congressional discretion." 424 U.S. at 83, 96 S.Ct. 612. Although the Court declined to address explicitly whether a $10 reporting threshold

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[3] The other government interests present in *Buckley* do not seem pertinent here. In *Vote Choice,* the First Circuit noted that "[c]ommon sense suggests that information about the source of a $1 contribution does not advance the state's interest in deterring actual or apparent corruption because such a donation has a limited (perhaps nonexistent) potential to exact an illegal or unethical quid pro quo." 4 F.3d at 32. Likewise, that court ruled that information about small contributions also "bears little discernable relation to the state's interest in enforcing contribution limits that dip no lower than $1,000: few persons will donate $1 to a [Political Action Committee] on more than 1,000 separate occasions – and those that try will likely grow arm-weary in the process." *Id.*

would be constitutional,[4] the *Buckley* decision implied that legislatures have considerable discretion in determining what limitations are within the bounds of "rationality." *Id.*

In this case, given the important government interests in ensuring that public money is properly distributed to candidates for office and in providing information to the electorate about the candidates, and since the size of the contribution does not attenuate those interests, the provisions at issue here are not unconstitutional. As the First Circuit stated in *Vote Choice, Inc. v. Di Stefano*, since the government has enunciated legitimate governmental interests and "[b]ecause the notion of first dollar disclosure is not entirely bereft of rationality . . . any general embargo against first dollar disclosure statutes would be inconsistent with the *Buckley* court's insistence upon judicial deference to plausible legislative judgments." 4 F.3d at 33.[5]

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[4] The Court declined to reach the issue because the FECA required only that candidates maintain records of donations greater than $10 and did not provide for the public disclosure of contributions between $10 and $100. *Buckley*, 424 U.S. at 84, 96 S.Ct. 612.

[5] In *Vote Choice*, the First Circuit was presented with a Rhode Island campaign finance law that required all Rhode Island political action committees ("PACs") to report the source and amount of all contributions made to them, regardless of amount, and found that such a provision was "not, in all cases, constitutionally prescribed." *Id.* at 33. Although the court in *Vote Choice* ultimately found the provision to be unconstitutional in the context of the entire statutory scheme in question because it applied only to contributions to PACs and not contributions made directly to candidates (which were subject to a $100

Finally, plaintiff cannot establish that he deserves to be exempted from the application of the disclosure law because "the compelled disclosure of [his] contributors' names will subject them to threats, harassment, or reprisal from either Government officials or private parties." *Buckley*, 424 U.S. at 74, 96 S.Ct. 612. Plaintiff did not contend in his papers that harassment of his contributors was a concern in soliciting their addresses. At oral argument, he opined that this concern was implicated by the common knowledge that there is a current conflict in the Middle East between Palestinians and Jews, and the fact that Orthodox Jewish residents of New York City have been attacked. These generalized assertions fall woefully short of demonstrating that in an election for the New York City Council in which plaintiff's opponent is also Jewish, plaintiff's supporters face harassment if their addresses are revealed.

2. Freedom of Speech

Plaintiff's freedom of speech challenge to the City's campaign disclosure requirements also has no merit. In *Buckley*, the Supreme Court stated that "[u]nlike [FECA's] overall limitations on contributions and expenditures," which the Court found to impermissibly burden a candidate's freedom of political expression under the First

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disclosure threshold), the provisions at issue here apply are distinguishable because they apply to a candidate and the candidate's campaign committee. There is no disparate treatment of entities under the New York City law.

Amendment,[6] its "disclosure requirements impose no ceiling on campaign-related activities," and thus do not raise freedom of speech concerns. *Id.* at 64, 96 S.Ct. 612. Here, the challenged provisions require only the disclosure of certain information regarding a candidate's contributors, and do not implicate the First Amendment's privilege of free speech.

The cases cited by plaintiff to the contrary are inapposite. *Arkansas Right to Life State Political Action Comm. v. Butler,* 29 F.Supp.2d 540 (W.D.Ark.1998), addressed contribution limitations and disclosure requirements applicable to independent expenditures, which by definition are not connected to or authorized by a candidate or his campaign committee. In that context, the district court ruled unconstitutional a $500 limit on contributions to independent expenditure committees because it was "too low to allow meaningful participation in the political process" and a disclosure provision requiring individuals making independent expenditures to identify themselves in any advertisements for which they were responsible that discussed a candidate. *Id.* at 547-50. In *North Carolina Right to Life, Inc. v. Bartlett,* 3 F.Supp.2d 675 (E.D.N.C.1998), *aff'd in part, rev'd in part,* 168 F.3d 705 (4th Cir.1999), the district court held that a statute barring any corporation from making political contributions or expenditures was unconstitutionally overbroad because it applied to non-profit corporations that posed no threat to

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[6] Plaintiff in this case does not challenge the New York City campaign finance law's contribution or expenditure limitations.

the integrity of the political process. Neither case suggests that a provision requiring the disclosure of a candidate's contributors burdens a candidate's First Amendment freedom of speech.

3. Free Exercise of Religion

Plaintiff's Free Exercise argument is also deficient, and borders on the frivolous. Plaintiff argues that the challenged campaign finance rules somehow infringe on his contributors' First Amendment right to free expression of religion, because plaintiff "will have to interrupt some or most of the worshippers while they are praying in order to qualify for matching funds." (Pl. Mem. at 2.)

The First Amendment prohibits the enactment of any law "prohibiting the free exercise" of religion. U.S. Const. amend. I; *accord Bronx Household of Faith v. Community School Dist. No. 10,* 127 F.3d 207, 216 (2d Cir.1997). To prevail on a Free Exercise claim, a plaintiff must show, at a minimum, that "the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520, 532, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993); *see also Genas v. State of New York Dep't of Correctional Servs.,* 75 F.3d 825, 831 (2d Cir.1996).

The challenged law in this instance simply provides that candidates for city offices cannot receive public matching funds for their campaigns if they do not disclose and keep records of information regarding their contributors. It is a neutral law of general applicability

that does not burden, even incidentally, a particular religious practice. The disclosure provisions do not in any way compel the affirmation of any religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, lend its power to one or the other side in controversies over religious authority or dogma, or in any other way violate the Free Exercise clause. *See Employment Div., Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 877, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990).

The only person who is interfering with the free exercise of religion in this case is plaintiff himself; it is his preference, not the law's, that he solicit individuals of a certain religious faith during their time of worship. Accordingly, plaintiff fails to state a claim for a violation of the Free Exercise clause.

B. Fourth Amendment Challenge

Plaintiff's purported Fourth Amendment "right to privacy" challenge also fails as a matter of law. (Am. Compl. ¶10.) As no government searches or seizures, pursuant to a warrant or otherwise, are involved in this case, the Fourth Amendment is simply not applicable to plaintiff's case.[7] Nevertheless, the Supreme Court recognized in *Roe v. Wade*, 410 U.S. 113, 152, 93 S.Ct. 705, 35

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[7] In the case cited by plaintiff, *Carmel-By-The-Sea v. Young*, 2 Cal.3d 259, 85 Cal.Rptr. 1, 466 P.2d 225, 231-32 (1970), the California Supreme Court indicated that a right to privacy "of one's personal financial affairs . . . against public disclosure is an aspect of the zone of privacy which is protected by the Fourth Amendment." The United States Supreme Court, however, has stated in cases like *Roe v. Wade*, 410 U.S. 113, 153, 93 S.Ct. 705, 35

L.Ed.2d 147 (1973), that a general "right to personal privacy" exists under the Constitution based on personal rights that are "fundamental" or "implicit in the concept of ordered liberty," such as activities relating to marriage, contraception, family relationships, and child rearing and education. This right has been construed to includes [sic] "the individual interest in avoiding disclosure of personal matters" and "the interest in independence in making certain kinds of important decisions." *Whalen v. Roe*, 429 U.S. 589, 598-99, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977).

In this case, the challenged statute and regulation require only that a candidate for public office disclose the identities and residential addresses of his contributors and the amounts that they donated. There is simply no support for plaintiff's argument that the New York City campaign finance law somehow infringes on a fundamental right to privacy of his to not disclose "personal matters."

The cases cited by plaintiff are distinguishable.[8] Without exception, they pertain to laws requiring certain public officials to disclose personal financial information to the public, such as their investments and the sources

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L.Ed.2d 147 (1973) and *Whalen v. Roe*, 429 U.S. 589, 598 n. 23, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977) that any right to personal privacy is derived from the Fourteenth Amendment's "concept of personal liberty and restrictions upon state action."

[8] *E.g., Hunter v. City of New York*, 88 Misc.2d 562, 391 N.Y.S.2d 289 (N.Y.Sup.1976), *aff'd in part, rev'd in part*, 58 A.D.2d 136, 396 N.Y.S.2d 186 (1st Dep't 1977); *Barry v. City of New York*, 712 F.2d 1554 (2d Cir.1983); *Plante v. Gonzalez*, 575 F.2d 1119 (5th Cir.1978); *Carmel-By-The-Sea v. Young*, 2 Cal.3d 259, 85 Cal.Rptr. 1, 466 P.2d 225 (1970).

and amounts of their income.[9] The instant provision does not require the disclosure of any such personal information. Therefore, plaintiff cannot state a claim for an infringement on his right to privacy (or his contributors' rights for that matter).

II. Plaintiff's Motion for a Preliminary Injunction

As the Court herein grants defendant's motion to dismiss, plaintiff's motion for a preliminary injunction is accordingly denied.

Conclusion

As the Court holds that as a matter of law Section 3-03(c)(4)(i) of Title 52 of the Rules of the City of New York and Section 3-703(6) of New York City's Administrative Code and Charter are not unconstitutional on their face or as applied and that plaintiff should not be exempted from the disclosure provisions, plaintiff's Amended Complaint must be dismissed. Defendant's motion to dismiss is granted and defendant's motion for

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[9] In any event, while courts, including the Second Circuit, have "recognized the existence of a constitutionally protected interest in the confidentiality of personal financial information," they have repeatedly upheld such disclosure provisions when they are supported by a "sufficiently weighty government purpose." *Statharos v. New York City Taxi and Limousine Comm'n*, 198 F.3d 317, 323 (2d Cir.1999) (citing cases). As discussed above, the government has a sufficiently weighty purpose in requiring the disclosure of a contributor's name and address in this case.

a preliminary injunction is denied. The Clerk of the Court is instructed to close the case.

SO ORDERED.

Allen HERSCHAFT, Plaintiff,

v.

THE NEW YORK CITY CAMPAIGN FINANCE BOARD, Defendant.

No. 00 CV 3754 CBA.

United States District Court,
E.D. New York.

Jan. 18, 2001.

Allen S. Herschaft, New York, NY, pro se.

Amy M. Loprest, Jonathan Wayne, Sue Ellen Dodell, New York City Campaign Finance Board, New York, NY, for N.Y. City Campaign Finance Board, defendant.

MEMORANDUM AND ORDER

AMON, District Judge.

The Court denied *pro se* plaintiff Allen Herschaft's motion for a preliminary injunction and dismissed his amended complaint in a Memorandum and Order ("Order") dated December 8, 2000. In the amended complaint, plaintiff challenged the constitutionality of Section 3-03(c)(4)(i) of Title 52 of the Rules of the City of New York and Section 3-703(6) of New York City's Administrative Code and Charter, which require that candidates for City offices seeking public matching funds comply with certain disclosure obligations. Plaintiff now moves for

reconsideration pursuant to Fed.R.Civ.P. 59(e), or for relief from judgment pursuant to Fed.R.Civ.P. 60.[1]

The standard for granting a motion for reconsideration pursuant to either Fed.R.Civ.P. 59(e) or Local Civil Rule 6.3 is "strict, and reconsideration will generally be denied." *In re Health Management Sys. Inc. Secs. Litig.*, 113 F.Supp.2d 613, 614 (S.D.N.Y.2000) (quoting *Ursa Minor Ltd. v. Aon Fin. Prods., Inc.*, 00 Civ. 2474, 2000 WL 1279783, at *1 (S.D.N.Y. Sept.8, 2000)). A motion for reconsideration is appropriate when the moving party can demonstrate that the Court overlooked "controlling decisions or factual matters that were put before it on the underlying motion . . . and which, had they been considered, might have reasonably altered the result before the court." *Range Road Music, Inc. v. Music Sales Corp.*, 90 F.Supp.2d 390, 392 (S.D.N.Y.2000) (quoting *Yurman Design, Inc. v. Chaindom Enters., Inc.*, No. 99 Civ. 9307, 2000 WL 217480, at *1 (S.D.N.Y. Feb.22, 2000)). Alternatively, the movant must demonstrate "the need to correct a clear error or prevent manifest injustice." *Griffin Indus., Inc. v. Petrojam, Ltd.*, 72 F.Supp.2d 365, 368 (S.D.N.Y.1999). These limitations are intended to "ensure finality and prevent the practice of a losing party examining a decision and then plugging the gaps of the lost motion with additional matters." *Range Road*, 90 F.Supp.2d at 392 (quotation omitted).

Plaintiff does not present any circumstances that persuade the Court to amend its prior Order of December 8,

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[1] Plaintiff also purports to rely on Fed.R.Civ.P. 61, but that rule does not provide a basis for amending or setting aside a judgment.

2000. In his submissions, plaintiff reargues issues already addressed by this Court, presents new evidence and legal authority for the Court to consider, and asserts an equal protection challenge for the first time. These contentions are for the most part improper on a motion to reconsider and are in any event unavailing.

First, plaintiff argues that the Court was mistaken in stating in its Order that plaintiff "did not contend in his papers that harassment of his contributors was a concern in soliciting their addresses." (Order at 10-11.) However, plaintiff does not refer the Court to pages in either his amended complaint, Memorandum for Motion of Preliminary Injunction, or Reply Brief to Defendant's Memo in Opposition where he makes such allegations, and the Court, having reviewed plaintiff's papers once more, is unable to find any.[2]

Instead, plaintiff refers the Court to the letter he sent to defendant New York City Campaign Finance Board on

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[2] The closest plaintiff comes to making such an allegation is on pages 2-3 of his memorandum in support of his preliminary injunction motion, where he states:

> [D]efendant's disclosure law is also violating plaintiff's and his supporters Freedom of Privacy, Confidentiality – making it more difficult for supporters to contribute to plaintiff's campaign, because they feel that it is constituting harassment, with respect to giving out personal information while contributing small sums to plaintiff's campaign.

This statement appears to contend that the requirements are burdensome on contributors, however, not that plaintiff's constituents fear they will be harassed if their names and addresses are disclosed publicly.

May 9, 2000, which states that the challenged disclosure requirements are "oppressive, constitute harassment and would be a burden or strain on small scale contributors. . . ." (Affidavit of Nicole A. Gordon, sworn to Oct. 4, 2000, Ex. C at 2-3.) This statement plainly does not allude to the possible harassment of plaintiff's supporters by third parties.

Plaintiff also refers the Court to his affidavit seeking an Order to Show Cause submitted on June 26, 2000 with his original complaint. There, plaintiff states:

> Furthermore, the plaintiff has a likelihood of success on the merits because the Supreme Court has held in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) that if there were evidence of impairments of First Amendment rights such that for example, there was a reasonable probability that harassment or threats to contributors resulted from the compelled disclosures then the Court would review the constitutionality of the disclosure requirement with strict scrutiny 424 U.S. at 75-83, 96 S.Ct. at 660-66. Plaintiff avers that the compelled campaign disclosures that the defendant is requiring of the plaintiff to produce in cases involving contribution amounts that are under $10, violate the first amendment rights of the contributors who wish to donate to the Plaintiffs campaign in that said disclosures interfere with their 1st Amendment right of Freedom of Religion.[3]

(Affidavit of Allen Herschaft, sworn to June 26, 2000, at 1-2.) While plaintiff certainly mentions the Supreme

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[3] This quotation is unaltered from the original.

Court's ruling in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), that minor party or independent candidates might be exempted from the provisions of the Federal Election Campaign Act of 1971 ("FECA") if they can show that the compelled disclosure of their contributors' names would subject those contributors to threats, harassment, or reprisals, there is no indication from plaintiff's affidavit that he was relying on such exemption in this case. Rather, plaintiff's affidavit explicitly states that he was instead relying on a free exercise challenge to the New York City campaign disclosure laws.

Regardless, plaintiff's argument is insignificant because the Court considered and rejected his generalized allegations of potential harassment in its prior Order. Even considering the new evidence that plaintiff presents, which was improperly submitted and could be disregarded out of hand,[4] the Court remains of the opinion that plaintiff's assertion that the disclosure of his contributors' names and addresses will subject them to harassment is "highly speculative." *Buckley*, 424 U.S. at

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[4] Plaintiff submitted with his motion several newspaper articles discussing recent attacks on Jews in New York City coinciding with the escalation of violence in the Middle East, and letters from Bernard Zakarin and Rabbi Chaim A. Stamm. These submissions are inappropriate for the Court to consider on a motion to reconsider. *See* Local Civ. Rule 6.3 ("No affidavits shall be filed by any party unless directed by the court."); *Laxer v. NBA Properties, Inc.*, 96 CV 4449, 1998 WL 372475, at *1 (E.D.N.Y. Apr.28, 1998) ("Rule 59(e) does not give a losing party the opportunity to proffer additional information of evidence that was available but not previously introduced.") (quotation omitted).

70, 96 S.Ct. 612. Although the recent acts of violence against Jews in New York City are deplorable, there is simply no basis thereupon to conclude that contributors to plaintiff's campaign for City Council will be targeted for threats or harassment. The letters submitted together with plaintiff's motion are likewise not persuasive on this point. The unadorned opinions of two individuals, Rabbi Chaim A. Stamm and Bernard Zakarin, that Orthodox Jews would be discouraged from contributing to plaintiff's campaign if they were required to disclose their names or addresses for fear of reprisals, are not sufficient to permit this Court to conclude that there is a reasonable probability that plaintiff's supporters would in fact be subject to threats or harassment if their names and addresses were publicly available.[5]

Second, plaintiff urges the Court to reconsider several of his claims that the Court addressed thoroughly in its prior Order. A motion for reconsideration, however, does not provide a forum for the non-prevailing party to reargue issues that the Court has already decided. *See, e.g., United States ex rel. Mikes v. Straus*, 84 F.Supp.2d 427, 441 (S.D.N.Y.1999); *University of California Press v. G.A. Insur. Co. of New York*, CV-94-4950, 1996 WL 497143, at *2 (E.D.N.Y. Aug.26, 1996), *aff'd*, 116 F.3d 466, 1997 WL

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[5] The Court of course recognizes that the campaign disclosure provisions at issue could potentially deter some individuals who might otherwise contribute to plaintiff's campaign, *see Buckley*, 424 U.S. at 68, 96 S.Ct. 612, but absent a reasonable basis on which to conclude that plaintiff's contributors would be subject to harassment, there is no basis to exempt plaintiff from New York City's constitutional and otherwise generally applicable campaign finance laws.

340375 (2nd Cir.1997). A Rule 59(e) motion is not a substitute for an appeal. *See Morales v. Quintiles Transnational Corp.*, 25 F.Supp.2d 369, 372 (S.D.N.Y. 1998). Since plaintiff does not contend that the Court overlooked any controlling law that was presented to it, the Court will not disturb its conclusions that the challenged provisions survive the exacting scrutiny standard established in *Buckley* for campaign disclosure rules that potentially infringe on the First Amendment freedom of association, and that they do not implicate either the First Amendment's privilege of free speech or any Fourth Amendment right to privacy.[6]

Third, plaintiff raises for the first time in his reply brief a new argument, asserting that the challenged disclosure provisions violate the Fourteenth Amendment's guarantee of equal protection because it unfairly burdens

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[6] In any case, the authority cited by plaintiff in the instant motion does not compel a different result. The Court has already distinguished *Hunter v. City of New York*, 58 A.D.2d 136, 396 N.Y.S.2d 186 (1st Dep't 1977), as it pertained to a statute requiring public officials to disclose personal financial information, such as the amount and nature of their income and investments. The other cases cited by plaintiff, *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) and *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 103 S.Ct. 416, 74 L.Ed.2d 250 (1982) are similarly unpersuasive. In *Nixon*, the Supreme Court upheld Missouri's campaign contribution limitations against a First Amendment challenge. In *Brown*, the Supreme Court simply noted that the district court below did not decide whether Ohio's campaign disclosure statute was facially invalid because it did not have a monetary threshold, but did address the question itself. Neither decision is thus contrary to this Court's prior Order.

Orthodox Jews. Plaintiff is not permitted to raise such a new claim in a Rule 59(e) motion, and the Court will disregard it. *Building Indus. Fund v. Local Union No. 3, Int'l Bhd. of Elec. Workers, AFL-CIO*, 992 F.Supp. 162, 186 (E.D.N.Y.1996). Rule 59(e) "review is narrow and applies only to already-considered issues; new arguments and issues are not [sic] be considered." *Morales*, 25 F.Supp.2d at 372. The Court notes, however, that even were it to consider the argument, it is plainly frivolous. The disclosure laws at issue do not expressly distinguish between candidates on the basis of religion, and there is no allegation that the laws are only enforced against candidates who are Orthodox Jews or that the laws were motivated by discriminatory animus against Orthodox Jews. Accordingly, the provisions do not violate the equal protection clause. *See Hayden v. County of Nassau*, 180 F.3d 42, 48 (2d Cir.1999).

The arguments addressed herein similarly fail to establish that plaintiff is entitled to relief from the Court's judgment pursuant to Rule 60(b). As with Rule 59(e), the standards governing the application of Rule 60(b) are strict. A court's final judgment should not "be lightly reopened." *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir.1986) (quoting *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir.1981)). "Since 60(b) allows extraordinary judicial relief, it is invoked only upon a showing of exceptional circumstances." *Nemaizer*, 793 F.2d 58, 61 (2d Cir.1986).

Plaintiff does not present any exceptional circumstances here; for the most part, he simply tries improperly to reargue issues that the Court has already decided or to advance new arguments attacking the constitutionality of

the challenged disclosure provisions. The fact that plaintiff disagrees with the Court's opinion, without more, is not sufficiently extraordinary to merit relief from judgment.

For the foregoing reasons, plaintiff's motion for reconsideration pursuant to Rule 59(e) or for relief from judgment pursuant to Rule 60(b) is denied. In addition, plaintiff's request, made after his motion was fully briefed, that the Court dismiss plaintiff's amended complaint without prejudice so as to allow him to preserve certain arguments is also denied. The Court had already considered and dismissed plaintiff's amended complaint in its entirety and with prejudice prior to his request to withdraw certain aspects of his complaint.[7]

SO ORDERED.

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[7] It should be noted that plaintiff has not requested the opportunity to further amend his amended complaint. In any event, the Court would not grant such a motion. Although Fed.R.Civ.P. 15(a) provides that leave to amend "shall be freely granted," the Court may within its discretion deny leave when amendment would be futile. *See Marchi v. Board of Coop. Educ. Servs. of Albany*, 173 F.3d 469, 478 (2d Cir.1999); *Jones v. New York State Div. of Military and Naval Affairs*, 166 F.3d 45, 50 (2d Cir.1999). In this case, the Court believes that amending plaintiff's amended complaint to include the additional evidence he presents on this motion to reconsider, or any similar evidence, would be futile.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse Foley Square, in the City of New York, on the 20th day of June two thousand one.

Present:

Hon. James L. Oakes

Hon. Ralph K. Winter

Hon. Chester J. Straub

CIRCUIT JUDGES,

Herschaft

v

N.Y. City Campaign

Docket No. 01-7136

(Filed June 20, 2001)

A petition for panel rehearing having been filed herein by Allen Stuart Herschaft

Upon consideration thereof, it is

Ordered that said petition be and it hereby is **DENIED.**

FOR THE COURT
ROSEANN B. MACKECHNIE,
Clerk

By: /s/ Beth J. Meador
Beth J. Meador,
Administrative Attorney

pethrg_frm

[1] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

ALLEN HERSHAFT,

Plaintiff,

v.

N.Y.C. CAMPAIGN FINANCE BOARD,

Defendant.

CV-00-3754

United States Courthouse
Brooklyn, New York

June 29, 2000
11:00 o'clock a.m.

----------X

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE.

* * *

[2] (Open court.)

THE COURT: Sir, do you wish time to obtain counsel?

MR. HERSHAFT: No. I'd like to make a statement. Under Rule 63 of the Federal Rules of Civil Procedure – it's a new rule, basically a new rule that they enacted, which relates to the inability of a judge to continue.

I wrote – I had a previous case before you last month. It was Hershaft versus New York City Board of Elections. I wrote to the (sic) Board of Elections a motion, Rule 35, supplement to the petition for hearing en banc.

In that motion I state the following: Plaintiff argues here that this extraordinary measure of a hearing en banc

by the Court of Appeals is needed – in the previous case that I came before this court – because plaintiff feels not only error was committed by the court below, but that he was not given a fair and impartial hearing which he was entitled to.

Plaintiff contends that the reason for this belief lies with prejudice and bias whether because of one or combination of the following factors: One. Plaintiff has a mental disability and the court below was insensitive or; 2 – or a combination – plaintiff is challenging the power and authority of the incumbent party or parties in this state by running for political office in a third or minor party ad by bringing this suit and therefore was not able to get a fair [3] hearing.

3, I made a statement, I take that – take that back, I made a statement and I – I don't think it's relevant, so I'm not going to – I crossed it out. I don't think it's relevant. Okay.

The grounds for plaintiff's belief that he was not given an impartial hearing lies in the fact that the judge in the court below did not even acknowledge or consider, for that matter, plaintiff's arguments in his memo, memorandum of law, in opposition to the defendant's motion to dismiss and the subsequent amendment memo in the rendering of its decision.

The fact – 2. The fact that at the hearing he gave – the judge gave the parties one month to submit documents before he would render a decision. He even told the defendant to submit a brief on the disability claim plaintiff was bringing, which the defendant did not even address in his motion to dismiss, and so plaintiff felt sure

that no decision would be rendered until this was done, but what in fact occurred was that the court on its own initiative offered justifications for this dismissal of this case which were outside the record and which thus makes decision one of summary judgment and a decision as to the merits of the case and not a decision based on a dismissal for failure to state a claim.

3. The fact that the judge actually rendered his [4] decision approximately one week after the hearing on May 1, 2000 and did not wait at least until one month had expired or at least until defendant had addressed the ADA claim, thereby not enabling plaintiff to buttress his case with expert testimony and discovery procedures before the month had expired.

As a result of all the above, plaintiff respectfully requests that the extraordinary and rarely used measure of en banc consideration be employed in this case at this level. Plaintiff is concerned that should he feel that he did not get a fair and impartial hearing at the Second Circuit level and is unable to appear any further on an appeal to the Supreme Court of the United States because it refuses to grant certiorari –

THE COURT: Slower.

MR. HERSHAFT: – he will have exhausted all that was available or offered to him by the political and legal system in place and will rightly or wrongly be [sic] feel so frustrated that the system was unable to grant him a fair and impartial hearing when he had his day or days in court that he will be forced to have to not only withdraw his candidacy for political office but to seriously consider having to move to other political systems where

they don't just give lip service to the fundamental freedoms they espouse, but where they meaningful [sic] cherish and protect his freedoms.

[5] Plaintiff further contends that such action by the District Court Judge cannot be explained away by saying it was oversight. His failure to consider arguments and defenses in my motion – in my response motion and amendment because plaintiff happens to know that judge in question, Judge Weinstein, is a Senior judge, Columbia University professor of law, and author of Weinstein Korn and Miller's Rules of Civil Procedure in New York, which plaintiff updates regularly at his place of employment.

Plaintiff contends here that what the judge did to his case at the minimum constituted negligence and is inexcusable at that, and at worst can be called intentional because of his background. Hence, plaintiff renews his call for a hearing en banc where it is his sincere hope that he can get an impartial and fair hearing which he feels was denied to him in the court below and which may be his last chance to obtain one. Now, I'd like you to consider Rule 63.

THE COURT: All right. Mark this document which is being presented to the court at this time. Are you asking the court to recuse itself?

MR. HERSHAFT: Yes.

THE COURT: All right. In connection with CV 00 3754. I recuse myself. Put it in the wheel and give it to another judge. Motion granted.

* * *

[1] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HERSHAFT,	:	CV-00-3754
Plaintiff,	:	United States Courthouse Brooklyn, New York
-against-	:	
N.Y.C. CAMPAIGN FINANCE,	:	September 11, 2000 10:30 o'clock a.m.
Defendant.	:	

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE CAROL B. AMON
UNITED STATES DISTRICT JUDGE

* * *

[10] address and the amount of contribution and the date it was given and otherwise, if you don't want to claim contributions under $10 for public matching funds you may lump them all together and report them as unitemized contributions in your disclosure statement.

THE COURT: But you are not going to get matching funds.

MS. LOPREST: Right, and the purity of that disclosure is kind of threefold. The disclosure is used for public information since all these disclosure statements are public record; second, it is essential for the campaign finance board to get this information to ensure that contributions are received not in violation of the law and are eligible for matching funds, which means that they are

from individuals in or about New York City residence and don't exceed the contribution limits set forth in the campaign finance act; and third, which is really not important here, is that it is to deter actual corruption or appearance of corruption by soliciting and collecting large contributions for contributors. So, Mr. Hershaft could collect his small contributions, get the person's name and address and their signature on one of these contribution cards and disclose them to the campaign finance board, and if he reported them on a disclosure statement, itemized them, then he could qualify for public matching funding. He meets the other requirements to

* * *

United States District
Court
Eastern District of NY

Allen Herschaft
Plaintiff,
v.
NY City Campaign
Finance Bd.
Defendant

00-CV-3754 (CBA)
F.R.C.P. #59(e)

Dear Judge Amon:

Pursuant to Federal Rule of Civil Procedure # 59(e) and also Federal Rules 60 and 61, I am hereby requesting in the interests of substantial Justice that the Memorandum and Order rendered on December 8th, 2000 which has not as yet been entered as Judgment be altered and amended to take into consideration the following factors with respect to what has already been decided in the order of Dec. 8th, 2000: 1. Mistake; 2. Important Issues which were not addressed in the opinion by your honor, but which have a bearing in Supreme Court precedent and authority and as a consequence the possible outcome of this case.

On page 10, of the Memorandum & Order (hereafter M & O) it is asserted that "Plaintiff did not contend in his papers that harassment of his contributors was a concern in soliciting their addresses." This statement is inaccurate because in the Original Affadavit [sic] of Plaintiff filed in June this contention was made. In addition, in Exhibit C of Defendant's Affadavit [sic] of Nicole Gordon is a copy my [sic] original petition to change the challenged rules

and in that document the harrassment [sic] concern is stated. So in two documents presented to this court and in which this court had judicial notice of, the harrassment [sic] concern was raised and yet was not considered by the court in the rendering of its decision.

Now, this information is especially important in a Motion to Dismiss under rule 12 b 6 where the standard is to accept all factual allegations as true and draw inferences in the light most favorable to Plaintiff (M & O, p. 4, 5).

Furthermore, in *Buckley v. Valeo*, 96 S.Ct. 612, 661 (1976), the case states "Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment or reprisals from either government officials or private parties. . . . A pattern of threats or public hostility may be sufficient. New Parties may be able to offer evidence of reprisals and threats directed against individuals holding similar views."

In keeping with the Buckley case, I am hereby submitting two affadavits [sic] and several recent newspaper articles detailing the attacks that were being made in Brooklyn and NY City regarding the spillover effect of the violence of the Middle East into NY City. The affadavits [sic], one by an Orthodox Jewish supporter, the other by a Rabbi in our Councilmatic district detail the evident fear that we Orthodox Jews have, and the privacy concerns that we hold so dear while we live, in fear, in such a dangerous environment as we have today.

Additionally, many times I called attention to the court that the net effect of disclosure requirements as it relates to the provision of addresses was to deter my ability to raise sufficent [sic] funds and to wage an effective battle in the campaign of getting my ideas across to the electorate

In this regard the case, *Nixon v. Shrink Missouri Government PAC*, 120 S.Ct. 897, 909 (2000) is enlightening. Although not present in my case, which here was a challenge to the campaign contribution limitation in Missouri but which as I have argued the disclosure provisions of the defendant has the same or similar effect as campaign contribution limitations. In this case the Supreme Court asked whether there was "any showing that the limits were so low as to impede the ability of candidates to amass the resources necessary for effective advocacy" citing *Buckley*, 96 S.Ct. at 612. "We asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless . . . The issue . . . must go to the power to mount a campaign with all the dollars likely to be forthcoming. *Nixon*, 120 S.Ct. at 909.

Furthermore, in the case *Brown v. Socialist Workers 74' Campaign Committee*, 103 S.Ct. 416 (1982) there was noted at 419 footnote #6 the argument that the District court did not decide the claim that the statute was facially invalid. The statute requires disclosure of contributions no matter how small. It was contended that the absence of a monetary threshold rendered the statute facially invalid since

the compelled disclosure of nominal contributions lacks a substantial nexus with any claimed government interest."

This argument is similar to the one that I have been making all along, except regarding the term facial invalidity, but the notion I had was similar to the one mentioned in the case. I refer the reader to my reply brief to the defendant's motion to dismiss and cross motion for summary judgment where I argued that the defendant had problems with the corruption problem occuring [sic] in my case where there were contradictory assertions being made at oral arguments and in the papers of defendant and where there were two federal cases holding that small contributions do not pose the danger of corruption. In addition regarding knowing the source of the contribution, this was not a problem here as in Buckley because I would only being [sic] raising money from Male Orthodox Jews and that therefore the address was not needed. This left only recordkeeping and the detection of violations as being the only government concern and this should be inadequate in and of itself to justify the state interest in disclosure of small dollar amounts as in my case.

Finally, I would like to call the attention of the court to the Oral Argument transcript of November 14th, 2000. On pages 15 & 16 I made assertions that I would meet *all* the threshold requirements by the defendant under the present law specifically the $5000 amount and 50 contributors in my district with donations of $10 or more, without need for an accommodation. I stated there, at the oral argument that the threshold requirements would be met without an accommodation. Later at the oral argument,

your honor, in questioning the defendant made inaccurate assertions regarding what I had actually said when I had presented my argument earlier to you. Maybe I should have objected but I did not wish to interrupt the defendant's presentation at that time.

Wherefore Plaintiff respectfully requests relief from Judgment under rules 59e, 60, 61 of the Federal Rules of Civil Procedure.

/s/ Allen S. Hershaft
Plaintiff-Pro Se Allen Herschaft

Dec. 13, 2000
Date

Rabbi Chaim A. Stamm, M.S.
1054 East 13th Street
Brooklyn, New York 11230
December 12, 2000

To Whom It May Concern:

As an orthodox Rabbi, I share the concerns of Mr. Abraham Herschaft with regard to the disclosure of political donor addresses.

Given the explosive atmosphere currently engulfing the Middle East, and the tendency of radical Arabs to associate all orthodox Jews as active Zionists, it is likely that candidates for public office, such as Mr. Herschaft (an orthodox Jew) will find themselves with a distinct disadvantage in efforts to raise necessary funds to wage their campaigns. Potential donors, fearful of reprisals, may well be intimidated, if their home addresses must be listed. I therefore urge that name and home boroughs suffice in this regard.

Sincerely,

/s/ Rabbi Chaim A. Stamm, M.S.
Rabbi Chaim A. Stamm, M.S.

Bernard Zakarin
1615-47 St
Bklyn, NY 11204

Dear Justice,

I state that when I give a donation to a politician, I never give my name, address or any other private information. This stands true whether it be a small or large contribution. In these times of trouble in the Middle East and in Orthodox Jewish neighborhoods throughout the world, this especially holds true. It would seem to me that the above stated information is true of most Orthodox Jews.

Sincerely,

/s/ Bernard Zakarin

NEW YORK TIMES

Thursday, October 5, 2000

New Hostility in Mideast Echoes in a Brooklyn Neighborhood

By NICHOLE M. CHRISTIAN

Along Eighth Avenue in Brooklyn's Sunset Park, Hasidic Jews and Palestinian Muslims cross paths at every corner. Women with unmistakable Yiddish accents shop in Islamic markets, alongside Arabic woman in head scarves. In the evenings, Jewish fathers pass Muslim fathers clutching the Koran, each on the way to pray to God or to Aliah. A few return home to the same blocks.

In Sunset Park, both sides say they have found peace, a refuge from the warring that has historically divided, the Middle East. For years, Jews and Arabs have raised children here and taught them to believe that in Sunset Park it is possible for people of divergent beliefs to coexist.

But now some residents are concerned that their neighborhood peace is in jeopardy. They worry that graffiti at a synagogue and a Jewish cemetery and two violent incidents this week in which Jews reported attacks by people identifying themselves as Palestinian may be linked to the gun battles and rioting between Jews and Palestinians in the Middle East. So far, one of the attacks has been labeled a hate crime by the police.

That case involved a 50-year-old Hasidic man who was slashed on Sunday, as he was strolling on Eighth Avenue in Sunset Park. The police say the attacker yelled

during the attack that he was Palestinian and that his victim was a Jew.

In the second incident, a Jewish man told the police that a man kicked him as he left the B train at the Fort Hamilton Parkway station. The police are investigating varying accounts of the incident, including one that the attacker was with a group waving a Palestinian flag.

No arrests have been made in either case. The police said yesterday that they were investigating several other complaints of what could be bias crimes.

Because of the attacks, Mayor Rudolph W. Giuliani has ordered increased police patrols. At a meeting with 50 Jewish and Muslim leaders at City Hall yesterday, he said, "Whatever is going on in the Middle East or in other parts of the world, people in New York have a right to have very strong feelings about it, very strong passions about it, but they have no right to harm anyone else."

Still, some people say they cannot shake the fear that hatred from another continent is threatening to turn neighbors here into enemies.

Gadeer Abdullah, an 18-year-old Palestinian woman who lives two blocks from where the slashing occurred, said she was angry that such a violent act had happened so close to her home. And she has been equally angered by the number of detectives who have come knocking on her door and those of other Palestinians living in Sunset Park.

"We're being singled out," Ms. Abdullah said as she and a cousin sat outside Halal Meats, a market frequented by Jews as well as by Arabs, on a recent evening.

"The police, they keep coming to our houses, asking us questions like we know what's going on, just because we're Palestinians. We lived our whole lives in this community together without hating."

On Tuesday, when news came that a bus parked in front of a yeshiva on Ninth Avenue had been set on fire, some feared that their neighborhood had become the scene of yet another bias crime. However, the police said that they believed the bus had probably been set on fire by students from a rival yeshiva and that they were not investigating it as a hate crime.

The police determination also confirmed Ms. Abdullah's concern. As she watched scores of people making their way to the corner where the charred remains of the bus sat surrounded by police and television cameras. Ms. Abdullah feared that "they're only going to blame us."

For hours, Orthodox Jewish men, women and children gathered around the bus, which the police say was set on fire early Tuesday morning. Some people in the crowd looked to the arson attack as proof that the rumors were true, that Jews in Brooklyn were under attack.

Across the street, others stared, too, but they said they were not ready to point fingers at neighbors who for years had done them no harm. "I'm terrified for my husband to go out at night to pray and to study," said Suri, a young Hasidic mother who would give only her first name. "We never had a problem with them before, especially not something like this," she said glancing at the bus. They have never let what happens over there affect here. Everybody is civil."

Yaakov, a tall Hasidic man who works at the school and who also would not give his full name, agreed. "We have lived very well together," he said in between answering questions from detectives. "We have different beliefs, but we do business together; we say 'hello.' "

But for Ms. Abdullah and other Palestinians here, the rush to judgment surrounding the bus, and the identity of the slasher, makes it difficult to believe that Sunset Park is immune to hate. "We're angry about what we're seeing on TV" from the Middle East said Shafic Mansour, a young Palestinian man. "That doesn't mean we're going to get crazy and go hurt people."

Ms. Abdullah added, "Nobody likes what has happened, the slashing, the bus. But why is it so easy for so many of them to believe it's Palestinians, when we've never had anything between us. You don't know somebody is Palestinian or Arab just because they say they are," she said referring to the slashing case in which the attacker identified himself as Palestinian.

Despite her frustrations and fears, Ms. Abdullah said she was determined not to judge her neighbors or abandon her love of shopping at National Liquidators, a Jewish-owned neighborhood wholesale store where she goes at least three times a week.

Even as she keeps her own daily death count of the Palestinian victims in the Middle East and memorizes the faces she sees on TV, she remembers where she lives.

"This is not Israel," she said. "We've got to respect each other. We live together."

DAILY NEWS

Wednesday, October 4, 2000

Anti-Semitic backlash suspected in 5 attacks

By ALICE McQUILLAN, FRANK LOMBARDI and BOB LIFF
DAILY NEWS STAFF WRITERS

The Police Department is investigating five alleged incidents of anti-Semitic violence that New York's Jewish leaders fear were prompted by the dispute raging in the Middle East.

Police officials said yesterday they are looking at the incidents as possible bias crimes, and Mayor Giuliani promised that cops would step up patrols in the Brooklyn and Queens neighborhoods where the acts occurred.

"We're just not going to accept or tolerate this kind of behavior," the mayor said.

In Brooklyn, police said an Orthodox Jewish man returning from synagogue in Borough Park on Sunday was slashed above the eye by a man who identified himself as a Palestinian.

On Monday, a man on a Brooklyn subway train was kicked by a group of young men claiming to be Palestinian who were carrying a Palestinian flag and spouting anti-Semitic rhetoric, police said.

Yesterday morning, graffiti was discovered at a synagogue on Ninth St., police said.

In Queens, authorities said they were investigating anti-Semitic graffiti found on a Jewish war memorial in

Far Rock away and in the Linden Hills Jewish Cemetery on Metropolitan Ave.

Assemblyman Dov Hikind (D-Brooklyn) said his office had received complaints of six bias incidents in which the victims were all "identifiably Jewish men," dressed in Hasidic garb or wearing yarmulkes.

Hikind, who was joined at his Borough Park office by several local rabbis and other legislators, cited the torching of a yeshiva school bus another potential bias attack.

"The tragedy in the Middle East should not be brought to New York," he said.

Police officials said they were investigating the bus fire, which they believe may be linked to an unrelated local dispute, but they were not familiar with other incidents referred to by Hikind.

The NYPD is setting up a temporary command post in the 66th Precinct to handle bias reports in the Brooklyn South command area until the Jewish holiday season is over, officials said.

The mayor also made an appeal for calm. He urged New Yorkers to avoid "group blame" aimed at Jews or Palestinians.

"Whatever is happening in any other part of the world should not reflect itself in any viciousness or nastiness happening in the city of New York," Giuliani said.

With Frank Lombardi

New York Post
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Monday, October 9, 2000

News

UNREST HITS HOME FOR NEW YORKERS

Angela C. Allen and Tom Topousis

Middle East-related tensions were also on the rise locally, with a protest outside the Palestinian mission yesterday and a possible bias attack at a synagogue in Riverdale.

The Bias Crime Unit is investigating a report that two bottles filed with what may have been a flammable liquid were hurled at the front doors of the Conservative Synagogue of Riverdale.

"It's a horrible thing to know people have such hate in their hearts they'd **attack** a synagogue on the eve of the most important holiday," said Rabbi Barry Katz, noting that Yom Kippur, the **Jewish** Day of Atonement, began at sundown yesterday.

Katz said he discovered the damage around 8:30 a.m. One of the glass doors was shattered by the bottles. No other damage was reported.

Yom Kippur services at the synagogue continued last night as planned with more than 1,000 people expected to attend.

"We will do what we've done for thousands of years . . . say our prayers and be together in solidarity," Katz said. In **Manhattan**, more than 200 people demonstrated

outside the Palestinian mission on East 65th Street yesterday.

The protest was linked to the weekend's destruction of a Jewish holy site, Joseph's Tomb, in the West Bank of Israel.

"We're asking New Yorkers how would they react if their places of worship were desecrated, were attacked. And that gives one a sense of what is happening in Israel," said protest organizer Rabbi Avi Weiss.

The hourlong protest was organized by the Coalition for Jewish Concerns. But a handful of demonstrators from the militant Jewish Defense League joined in, carrying signs that read "Smash Arab Terror."

One member of the Jewish Defense Group ripped a Palestinian flag to shreds as his companions shouted, "Expel the Arabs now!" outside the mission's door.

Peace and reconciliation seemed far from mind at the protest.

"There will never be peace and co-existence with these jackals," said one Jewish demonstrator.

New York Post
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Thursday, October 5, 2000

News

CITY'S JEWS AND ARABS VOW UNITY

Frankie Edozien

New York Arab and Jewish leaders vowed to preach tolerance in their communities after a two-hour City Hall sitdown with Mayor Giuliani yesterday.

Cops are investigating 10 suspected bias **attacks** against **Jews**, some said to have been committed by youths brandishing the Palestinian flag.

Rumors of similar incidents have spread like wildfire in Jewish communities – but authorities say some are unfounded.

Most of the attacks have occurred in **Brooklyn**, apparently precipitated by the latest outbreak of violence in the Mideast.

"We have one circumstance where a gentleman was slashed . . . an incident where there was a bus lit on fire in **Brooklyn**, a yeshiva bus," said Police Commissioner Bernard Kerik, who also attended the meeting.

He added that rumor control was a major concern.

"We had an incident the other day in which a young man cut his finger on a soda can at a pizzeria in **Brooklyn**. By the time it got to headquarters and throughout the community, he had been stabbed in the hand by some Arab males," Kerik said.

Howie Katz, regional director of the Anti-Defamation League, said, "We understand that we need to talk to the people in our community to dispel any rumors, to work together to show that we will not tolerate anyone being hurt, because of who he or she is."

Emira Habiby-Browne of the Arab-American Family Support Center said the city's Jews and Arabs alike cherish their good relationship, and added that many Arab immigrants have come here to exercise freedom of expression.

"Emotions are running extremely high right now – they cannot but spill over," she said, adding that Arabs "should express themselves in a legal way."

Giuliani said that the community leaders plan to issue a joint statement calling for tolerance.

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Wednesday, October 4, 2000

News

RUDY URGES CALM AS CONFLICT HITS HOME

Frankie Edozien

Mayor Giuliani has summoned local Jewish and Arab leaders to City all this morning to defuse tensions resulting from clashes in the Middle East.

"The mayor is very concerned about what's going on," one source said of the hastily called session.

A rash of anti-Semitic **attacks** here in recent days has been linked to fighting between **Jews** and Palestinians in Israel – with some suspects in **Brooklyn** waving Palestinian flags.

Giuliani vowed to make an example of the assailants and said cops are beefing up patrols.

"We're in **New York City.** We're not in the Mideast, we're not in Europe, we're in America," Giuliani said as he appealed to New Yorkers not to engage in "group blame."

He said information gathered by cops led him to believe the crimes were committed by attackers motivated by the Mideast clashes.

On Sunday, a **Brooklyn** man was severely beaten and slashed in the head in the Sunset Park area by two people who yelled anti-Semitic slurs. The attack took place at Eighth Avenue near 44th Street.

A day later, a straphanger on the B train was heckled by four men waving a Palestinian flag and was kicked in the head when he got off the Fort Hamilton station.

Later that day, a monument was defaced in **Queens** with anti-Jewish slurs scrawled on it.

Assemblyman Dov Hikind (**D-Brooklyn**) said more such incidents were reported to his office, particularly on subways, which he later forwarded to cops.

"All of it involves young Palestinians who are bringing the conflict here in **Brooklyn**," Hikind said.

Hikind said he has appealed to Arab leaders to call for tolerance.

"We're just trying to calm things down," he said.

Police patrols are being increased near sensitive locations, such as religious schools.

"We'll make every effort to catch the people responsible for the attacks and make an example out of them . . . " Giuliani said. "We're just not going to accept or tolerate this kind of conduct in the City."

"It is crucial that the **Jewish** community joins together with the Arab-American community and city officials to work to further prevent violence," the American **Jewish** Congress said.

"We must not blame any ethnic group for the outrageous acts of a handful."

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Tuesday, October 3, 2000

News

N.Y. PROTEST DECRIES MIDEAST SAVAGERY

Dan Mangan

Chanting "Long live Palestine!" and "God is great!" hundreds of protesters demonstrated outside the Israeli Consulate yesterday – decrying what they called Israel's "savagery" in fighting rioters.

"We're horrified," said Maz Jadallah of **Manhattan**. "It just comes down to humans asking to be treated like humans."

"You'll continue to see violence as long as the Israelis continue to oppress the Palestinian people," Jadallah predicted, as fellow marchers carried photos of the 12-year-old boy who died in his father's arms when he was shot Saturday.

"I can't believe the savagery," said Nihaya Dugan, co-chairman of the New York-New Jersey Committee of the Palestine Right to Return coalition, one of the organizers of the demonstration at 800 Second Ave. "It's not a crime to be Palestinian."

Protesters – including several **Jews**, some of them Hasids who oppose Israel on religious grounds – blamed the **violence** on last week's visit to Jerusalem's contested Temple Mount by right-wing Israeli politician Ariel Sharon.

"That lunatic. . . . Letting Sharon on the site of the mosque meant the certain death of X number of Arabs and X number of Jews. It was foreordained," said writer and activist Lenni Brenner, who is Jewish.

Brenner drew the wrath of on looker Mordechai Levy of the Jewish Defense Organization, who shouted "dirty, vile, self-hating, Jew trash" at him, before cops told Levy to move along.

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News

N.Y. ANTI-SEMITISM ON RISE

Andy Soltis

Anti-Semitic incidents are on the decline in the United States and **New York City**, but increasing in New York state – which is first in the nation, an Anti-Defamation League survey found.

The survey found New York state had 352 incidents – 202 cases of vandalism directed against Jews and 150 cases of harassment, including physical threats – in 1999, an increase of 9 percent over 1998.

The incidents included the scrawling of "Hitler" and swastikas at a Jewish student club at Hunter HS in **Manhattan**, the burglary, vandalizing and painting of swastikas at a fraternity house at Cornell University and the painting of a giant swastika over an entire upstate traffic lane between Petersberg and Grafton.

California, with 275 incidents, New Jersey, with 226, and Massachusetts with 111 were the only other states reporting more than 100 incidents.

Three major **attacks** on **Jews** occurred last summer – three synagogue fires in Sacramento, Calif., in June, a hate-group activist's shooting **attacks** on **Jews** and blacks in Indiana and Illinois in July and a neo-Nazi's assault on a **Jewish** community center in L.A. in August.

The New York state rise came despite a 6 percent decrease in **New York City**, where 185 incidents were reported last year, compared with 197 in 1998.

The survey found that incidents more than doubled upstate – from 11 to 29 – and increased on Long Island from 114 to 126.